

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

CRIMINAL APPLICATION (BA) NO.13 OF 2017

(Bablu @ Aniskhan Yunus Khan ..vs.. State of Maharashtra, through PSO, PS Shegaon, District
Buldhana)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri A.B. Mirza, Advocate for the applicant,
Shri N.R. Patil, Addl.P.P. for the non-applicant/State.

CORAM : S.B. SHUKRE, J.

DATED : 25-04-2017

This applicant is being prosecuted on the allegations that he alongwith other accused persons was involved in counterfeiting of currency notes using them as genuine currency notes and being in possession of the counterfeit currency notes and making or possessing instruments for preparation of counterfeit of currency notes, for the offences punishable under Sections 489-A, 489-B, 489-C and 489-D of the Indian Penal Code. This applicant has been arrested in this crime, which is Crime No.51/2013 on 02-05-2013. The charge-sheet was filed on 22-07-2013. Now, this applicant has moved this Court on the ground of inordinate delay in conclusion of the trial of the sessions case pending against him.

Applicant submits that he is in jail for almost a period of four years and the concerned sessions Court has not made any reasonable efforts to conclude the trial as expeditiously as possible, and within a reasonable

period of time. He submits that considering the nature of allegations made against this applicant, the maximum punishment that could be imposed upon him, in case the offence is proved against him, which possibility according to the applicant, is very remote, would be of seven years only and this applicant now has already suffered half of the maximum term of imprisonment prescribed for the offences alleged against him.

Learned Additional Public Prosecutor for the non-applicant has opposed this application on the ground that the trial is likely to be concluded within a short period of time and therefore, at this stage, that this application must not be allowed.

The under trial prisoner, who asserts his fundamental right to speedy trial, which is subject to reasonable restrictions, can be allowed to enjoy the fruits of such a right, if it is seen from the record of a particular case that no reasonable efforts are taken by the concerned Court in expeditiously concluding the trial. In a given case, it may happen that there are factors which contribute to delay and which are not within the control of the trial Court. These factors could be like accused themselves filing several applications seeking interim orders and/or adjournments. There could also be occasions when the Investigating Officer, who has filed the charge-sheet, does not ensure that the prosecution

witnesses respond to the summons served upon them and so because of absence of prosecution witnesses, the trial does not proceed further. There could also be cases where the trial Court issues directions to the Investigating Officer to ensure that all the witnesses of the prosecution attend the Court on the dates fixed in the matter and the directions are not effectively complied with by the prosecution. In some cases, the under trial prisoners may also not be produced on the dates when evidence of prosecution witnesses is to be recorded or occasions when personal presence of the under trial prisoners is necessary. There can be many more instances and what has been mentioned just now is only by way of illustration. All these instances would show that there is very little which can be attributed to the trial Court for occurrence of delay in conclusion of the trial. These are the factors which are by and large beyond the power and control of the trial Court. In any of such cases, one can say that inspite of reasonable efforts made by the trial Court, the trial could not be concluded expeditiously and then, one can also say that there is no violation of right of the accused to have speedy trial of the case against him. It is only when there is unreasonable delay and the delay is inordinate that would perhaps enable the under trial prisoner who is facing criminal prosecution to assert his right to speedy trial.

On the directions issued by this Court, the concerned sessions Court has submitted its report in the present case explaining the factors which led to prolonging of the trial. Perusal of report dated 17-04-2017 indicates that the charge itself has been framed against this applicant and others with a great delay, after lapse of about period of two years from the date of filing of the charge-sheet. No reason has been mentioned in this report for delay occurred in framing of the charge. The report further shows that the prosecution, so far has examined in all ten witnesses. Again no reason has been cited as to why it took a period of about almost one and half years for examining just ten witnesses. No reasons are also given in the report as to why, trial was not held on day to day basis, although it is one of the requirements of the procedure to be followed while conducting sessions cases.

The circumstances noted above would be sufficient for me to make a *prima facie* conclusion that this applicant could not be largely blamed for the delay, which has occurred in the instant case. He has already undergone about four years of period under detention and having regard to the maximum punishment that could be possibly given to this applicant, I am of the further view that this applicant is entitled to be released on bail mainly on account of delay in trial.

Then, of course, there are other factors, which also need to be considered while deciding this bail application. It is not in dispute that this was a trap case and all panch witnesses have turned hostile. Even the Investigating Officer has been stated to be later on trapped in an anti corruption case.

In the circumstances, I find that this application now deserves to be allowed. That will, however, be with necessary directions to the learned Sessions Judge for expediting the trial of all the under trial prisoners.

The application is allowed and it is directed that the applicant shall be released on bail in Crime No.51/2013 registered with Police Station Shegaon, District Buldhana for the offences punishable under Sections 489-A, 489-B, 489-C and 489-D read with Section 34 Indian Penal Code on his furnishing P.R. Bond of Rs.50,000/- together with one solvent surety in the like amount, on the following conditions :

- (i) The applicant shall report to the concerned Police Station on every Sunday between 10-00 a.m. and 12-00 noon till the trial is over.
- (ii) The applicant shall regularly attend the dates fixed by the Court and shall co-operate with the trial Court in expeditious disposal of the trial.

(iii) The applicant shall not tamper with the prosecution evidence in any manner.

Before parting with the order, I find it necessary to make some observations regarding the steps to be taken for expeditious disposal of the cases pending against the under trial prisoners. In such cases, it would be desirable that the learned Sessions Judge, who heads Sessions Division in the District, convenes a meeting of all the learned Additional Sessions Judge entrusted with the cases of under trial prisoners and impresses upon them the need for taking various steps to expeditiously dispose of such cases. If it is brought to the notice of the learned Sessions Judge by the other Judges that the under trial prisoners are not being produced before their respective Courts by the Jail Authorities or the Investigating Officers are not ensuring attendance of prosecution witnesses in response to the summons issued by the trial Court, the learned Sessions Judge shall impress upon the Commissioner of Police/ Superintendent of Police to personally ensure that such instances are not repeated and if such requests made by the learned Sessions Judge to the police heads are not taken seriously, the learned Sessions Judge shall inform of the same to this Court so that appropriate action could be initiated in the matter.

The application is disposed in the above terms.

JUDGE

adgokar